

Town of Amherst
Zoning Board of Appeals – Special Permit

DECISION

Applicant: Peter Levy
370 Potwine Lane
Amherst, MA 01002

Owner: Ben & Mary Levy
63 Ferry Hill Road
Granby, MA 01033

Date Application filed with the Town Clerk: July 2, 2008

Nature of request: Pursuant to Section 5.013 of the Zoning Bylaw, Home Occupation, the applicant seeks a Special Permit to have a home carpentry and furniture business within an existing garage attached to the principal dwelling.

Location of property: 370 Potwine Lane (Map 23B, Parcel 84, R-O Zoning District)

Legal notice: Published in the Daily Hampshire Gazette on July 9 & July 16, 2008 and sent to abutters on July 8, 2008.

Board members: Jane Ashby, Hilda Greenbaum, Eric Beal

Submissions: The applicant submitted a Management Plan, a floor plan sketch showing the relationship of the proposed business to the dwelling, plus type and location of tools.

Site Visit: July 23, 2008

The Board met with the applicant at the property and observed the following:

- The existing single family dwelling situated on a flag lot set back several hundred feet from Potwine Lane;
- The gravel driveway and existing parking areas;
- The existing woodshop, with small power tools and wood storage areas.

Public Hearing: July 24, 2008

The petitioner, Peter Levy, spoke to the petition at the hearing and provided the following information:

- He is seeking a Special Permit to establish a small wood furniture business;
- All work will utilize only wood products;
- All work will occur in the garage
- All materials will be delivered to site by petitioner in private vehicle (pickup truck);
- All sales will be internet based; customers will not frequent the shop;
- The Special Permit does not require any new structures or exterior alterations.

Ms. Ashby inquired whether the applicant was the owner of the residence. Mr. Levy stated that the house is owned by his parents. Ms. Ashby noted that the existing driveway offers a turn around such that vehicles would not be required to back out of the driveway.

Ms. Ashby asked if anyone from the public would like to speak to the petition.

Elisabeth Talis, 203 Middle Street, inquired about the proposed hours of operation, potential noise created and number of vehicles.

Ms. Greenbaum asked Ms. Talis if she has ever heard noise before and how loud the noise was. Ms. Talis replied that she has heard noise of varying degrees.

Ms. Ashby noted that the management plan lists the hours of operation from 9 A.M. to 5 P.M. Mr. Levy said that the equipment would generally be operated with the garage door closed and suggested that other construction ongoing in the area could be the noise of which Ms. Talis was referencing.

Ms. Ashby asked the applicant to describe the nature and extent of equipment he will use. The applicant provided a list of equipment including various electric saws and sanding tools. Ms. Ashby discussed with the Board whether it may be appropriate to have a condition requiring the garage door to be closed while operating equipment.

Mr. Beal inquired whether the Town of Amherst has any restrictions on the level of noise in residential areas. Building Commissioner Weeks, made reference to the Town's Noise Bylaw and noted that it does not identify maximum decibel levels and allows operation between 7 A.M. to 11 P.M.

Ms. Talis asked that, because the business is in a quiet residential area, whether the shop could be required to be sound-proofed.

Ms. Greenbaum asked the neighbor if she was home between 9 A.M. – 5 P.M. Ms. Talis replied yes, in the summer, as she is a teacher.

The Board asked Ms. Talis to identify her property on a Town GIS map. It is situated on the corner of Potwine Lane and Middle Street and is separated from the applicant's property by another lot.

Martha Spiegelman, 185 Middle Street (east of the subject property), noted that her property backs up to the applicant's property. Ms. Spiegelman would like to have the petitioner create some kind of sound barrier due to the nature of the business. Ms. Spiegelman said that she had heard the noise today.

Ms. Greenbaum suggested that the hearing be continued to investigate the sound levels and possible mitigation measures.

Mr. Levy stated that he was not using the shop today, so the noise wasn't from his property. Ms. Talis stated that perhaps it was the applicant's dog.

Ms. Greenbaum suggested that perhaps the applicant could use a sound engineer to identify the decibel levels of the equipment. Mr. Beal asked if anyone would be able to tell what the information from a sound engineer actually means.

Mr. Levy asked the Board what information they would be looking for.

Building Commissioner Weeks, suggested that decibel readings could be taken at the abutters property line. One test could have no tools in operation, reading the ambient noise, and one reading could have tools in operation.

Mr. Beal volunteered to visit the site with the applicant and assess the noise levels while the tools are being operated, taking readings with his decibel meter.

The Board and the applicant discussed the potential number of employees; two, in addition to the applicant, are allowed under Section 5.013 of the Zoning Bylaw. The applicant stated that he does not wish to have any additional employees due to the small size of his shop.

After deliberation, the Board decided that the applicant should conduct the following noise level tests:

- One test, at the abutter's property line, with no tools in use;
- Tests at the abutter's property line, with each tool in use with the garage door open;
- Tests at the abutter's property line, with each tool in use with the garage door closed.

Ms. Greenbaum made a motion to continue the hearing to allow the applicant to test various noise levels. Mr. Ashby seconded and the Board voted unanimously to continue the hearing to a date certain of August 7, 2008 at 9:00 P.M.

Continued Public Hearing: August 7, 2008

Mr. Levy spoke to the petition at the continued hearing and stated the following:

- He met with the two neighbors (Spiegelman & Talis) and ran the machines under two conditions; with the garage door open and closed;
- He noted that the neighbors did not hear any objectionable noises in either scenario;
- He said that the Spiegelman's property line is about 25 feet from the garage but their dwelling is about 250 feet from the garage. He noted that the Talis property is approximately 400 feet from his garage.

Mr. Beal stated that he conducted a site visit on August 1, 2008 during which he listened to Mr. Levy operating his machinery and measured the noise levels with a decibel meter. Mr. Beal noted that he measured the noise levels at the property line and that the noise levels were barely readable on the decibel meter with the garage door open and noise levels were not measurable with the garage door closed.

The Board noted receipt of an email communication from Martha Spiegelman, dated July 30, 2008, which indicated that they no longer object to the application.

The Board was satisfied that all testimony had been taken and that they were ready to make a decision.

Ms. Greenbaum moved to close the public hearing. Mr. Beal seconded the motion. The Board voted unanimously to close the public hearing.

Public Meeting:

The Board spent the remainder of the public meeting composing conditions for the Special Permit if it were to be approved.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there will be no exterior changes or modification to parking. The business is to operate within a portion of the existing single family dwelling, the garage.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because the Board has determined that the noise associated with the home occupation is minimal and the proposed business will be situated a substantial distance from adjacent dwellings.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because the petitioner shall be responsible for all deliveries of materials and delivery of completed products.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the petitioner has demonstrated that the location of the proposed business is both adequate and functional.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because the proposed business does not require any additional parking areas and does not require any signage.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the petitioner plans to re-use or recycle any by-products associated with the wood furniture business.

10.391 – The proposal protects unique or important natural, historic or scenic features because the home occupation is not in proximity to known unique or important natural, historic or scenic features.

10.393 – The proposal provides protection of adjacent properties because the petitioner has demonstrated to the Board and neighbors that there will not be any detrimental or offensive noise associated with his woodworking business.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity because the proposed business is owned and operated by a single person, is located within an existing single family dwelling and does not require any exterior changes to the existing building.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision

Ms. Greenbaum made a motion to APPROVE the Special Permit for a home occupation, to conduct carpentry and construct home furniture within a portion of an existing garage attached to the principal dwelling, with conditions. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit to Peter Levy to conduct a carpentry and home furniture business under Section 5.013 of the Zoning Bylaw, Home Occupation, at 370 Potwine Road (Map 23B, Parcel 84, R-O Zoning District).

JANE ASHBY

HILDA GREENBAUM

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Peter Levy to operate a carpentry and home furniture business within an existing garage attached to the principal dwelling, as a home occupation under Section 5.013 of the Zoning Bylaw, at 370 Potwine Lane, (Map 23B, Parcel 84, R-O Zoning District) subject to the following conditions:

1. There shall be no employees, other than the petitioner, associated with the business.
2. There shall be no outside deliveries related to the business, other than those made by the petitioner.
3. Only furniture products produced by the business shall be sold on the property.
4. The hours of operation shall be Monday through Friday, 9 AM to 5:00 PM.
5. The business shall be managed according to the Management Plan submitted by the petitioner and approved by the Board at a public meeting on August 7, 2008.
6. Any changes to the Management Plan shall be approved in a public meeting by the Board.
7. This permit expires if the applicant ceases to operate the business from the property.

JANE ASHBY, Chair
Amherst Zoning Board of Appeals

DATE